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**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of Telecommunications  
and Energy on its own Motion to Implement the  
Requirements of the Federal Communications  
Commission's Triennial Review Order Regarding  
Switching for Mass Market Customers

D.T.E. 03-60

REBUTTAL TESTIMONY

of

HARRY GILDEA

on behalf of

THE UNITED STATES DEPARTMENT OF DEFENSE AND  
ALL OTHER FEDERAL EXECUTIVE AGENCIES

**PUBLIC VERSION**

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## REBUTTAL TESTIMONY OF HARRY GILDEA

### 2 I. Introduction

3 Q. What is your name and business address?

4 A. My name is Harry Gildea. My business address is 1220 L Street, N.W.,  
5 Suite 410, Washington, D.C. 20005.

6 Q. What is your professional background?

7 A. I have been a consultant for nearly 40 years. Since 1972, I have been  
8 associated with Snavelly King Majoros O'Connor & Lee, Inc. (formerly Snavelly King and  
9 Associates, Inc.). Before then, I was with the Economic Development Administration in  
10 the U.S. Department of Commerce, where I was responsible for evaluations of the  
11 effectiveness and costs of federal economic development programs. From 1962 to  
12 1969, I was with Peat Marwick Livingston & Company, where I managed the firm's  
13 operations research consulting practice in the Washington area. Before 1962, I was a  
14 research engineer with Sylvania Electric Products, a subsidiary of the General  
15 Telephone and Electronics Corporation.

16 Q. What is your educational background?

17 A. I received the degrees of Bachelor of Science in Electrical Engineering  
18 and Master of Science in Electrical Engineering from the Massachusetts Institute of  
19 Technology in 1958.

20 Q. What is the nature of your work with Snavelly King Majoros O'Connor &  
21 Lee, Inc.?

22 A. As a Senior Consultant for the firm, I work with clients in cases before  
23 state and federal regulatory agencies involving public utilities. In this capacity, I perform  
24 research and analysis on issues in telecommunications policy, regulation, engineering  
25 and economics.

26 Q. Has your work concentrated on particular industries?

1           A.     Yes. My work has been primarily in the telecommunications field, but I  
2     also have participated in gas, electric and water cases, as well as cases concerning the  
3     U.S. Postal Service. In my 30 years of experience in the telecommunications industry, I  
4     have performed research and analyses concerning nearly all telecommunications  
5     services, including local exchange services, interexchange services, private line  
6     services, Centrex, telex, video, data, cellular, personal communications, and other  
7     services.

8           Q.     Have you testified previously in Massachusetts?

9           A.     Yes. I have testified in numerous cases before the Department of  
10    Telecommunications and Energy ("Department") and its predecessor, the Department  
11    of Public Utilities. Most recently, I presented testimony in D.T.E. 01-20 concerning the  
12    rates and charges for unbundled network elements ("UNEs").

13          Q.     Have you testified before other regulatory agencies?

14          A.     Yes. I have testified as an expert witness before the Federal  
15    Communications Commission ("FCC") and the Federal Energy Regulatory Commission,  
16    as well as the regulatory agencies of California, Colorado, Connecticut, the District of  
17    Columbia, Florida, Georgia, Illinois, Kentucky, Maryland, Michigan, Missouri, New  
18    Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina,  
19    Tennessee, Texas, and Virginia. In addition to testimony, I have prepared and  
20    presented written comments on telecommunications matters to the FCC and many  
21    state regulatory agencies.

22          Q.     Do you have additional experience in the telecommunications field?

23          A.     Yes. I have served as a consultant to federal agencies on rate design and  
24    tariff issues in numerous major procurements by the government, including Aggregated  
25    System Procurements for local telephone services in 30 states, the FTS2000 and  
26    FTS2001 systems for intercity telecommunications, the Metropolitan Area Acquisition  
27    Program for services to federal offices in more than 20 large metropolitan areas

1 throughout the nation, and the Washington Interagency Telecommunications System  
2 for services to federal offices in the Washington, D.C. area. Also, I have been a  
3 consultant to the Defense Information Systems Agency concerning domestic and  
4 international rate structures and services, and the costs of data and voice  
5 communications systems.

6 In addition, I have performed damage studies in three antitrust cases  
7 involving telecommunications firms. Over the years, I have been engaged as a  
8 consultant to telecommunications firms in several proceedings before the FCC, and a  
9 case before the United States Court of Appeals. In addition, I have been a consultant  
10 to the government of Canada, as well as carriers and end users of telecommunications  
11 services in many regulatory proceedings. Also, I testified as an expert witness in a  
12 proceeding before the General Services Administration Board of Contract Appeals  
13 concerning the award of a major contract for telecommunications services.

14 Q. For whom are you testifying in this case?

15 A. I am testifying on behalf of the customer interests of the United States  
16 Department of Defense and All Other Federal Executive Agencies ("FEAs").

17 Q. What is the subject of your testimony?

18 A. I discuss the network unbundling requirements and rules adopted by the  
19 FCC in the *Triennial Review Order* released on August 21, 2003.<sup>1</sup> On November 14,  
20 2003, Verizon Massachusetts ("Verizon") filed testimony with this Commission relating  
21 to the mass market switching, transport and local loop UNEs addressed in the *Triennial*  
22 *Review Order*. In the following testimony, I shall address Verizon's submission  
23 concerning these UNEs.

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<sup>1</sup> *In the Matter of the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability; Report and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338, 96-98, and 98-147, FCC 03-36 (rel. Aug. 21, 2003) ("*Triennial Review Order*").

1     **II.     Interests of the FEAs**

2           Q.     What are the customer interests of the FEAs in this proceeding?

3           A.     As end users, federal agencies will not have access to UNEs provided by  
4 incumbent LECs. However, decisions concerning the availability, prices, terms and  
5 conditions for UNEs will impact the prices, terms and conditions for services that federal  
6 agencies obtain from all of their telecommunications vendors. Decisions concerning  
7 the availability, prices, terms and conditions for UNEs will also determine whether there  
8 will be viable competition for all telecommunications services. The FEAs want more  
9 and stronger competition to ensure that all end users can obtain the best  
10 telecommunications services at the lowest possible costs.

11          Q.     Is competition especially important to end users using a competitive  
12 bidding process to obtain telecommunications services?

13          A.     Yes. Competitive bidding is clearly more effective if there are more  
14 potential suppliers. Although many believe that large users have ample choices among  
15 potential suppliers because many carriers are vying for their business, in fact there are  
16 few responses to many requests for bids.

17          Q.     Have UNEs played an important role in the development of competition?

18          A.     Yes. UNEs have played the paramount role. The *Telecommunications*  
19 *Act of 1996* contemplates that new entrants will compete in three ways: 1) by offering  
20 services with own facilities; 2) through resale of incumbent LECs' services; and 3) by  
21 using UNEs.<sup>2</sup> Among the three modes, UNEs have been the most frequently used. For  
22 example, a report published by the FCC on the extent of competition on June 30, 2003

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<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* (“*Telecommunications Act*”), § 251.

1 shows that more than 58 percent of all competitive LEC switched access lines  
2 employed UNEs.<sup>3</sup>

3 Q. Do FEAs have a vital interest in UNEs for services to all consumers?

4 A. Yes. For some UNEs, the *Triennial Review Order* distinguishes between  
5 “enterprise market” and “mass market” consumers.<sup>4</sup> According to the *Triennial Review*  
6 *Order*, the FCC views the “enterprise market” as access using DS–1 (24 voice–grade  
7 channels) or greater access capacity, while the “mass market” consists of services to  
8 subscribers with lower capacity access.<sup>5</sup>

9 Q. Are the FEAs concerned with both the “enterprise market” and the “mass  
10 market”?

11 A. Yes. In the aggregate, the FEAs are a very large user of  
12 telecommunications services, with requirements for high capacity access at many  
13 locations. Nevertheless, FEAs are concerned with procedures governing the availability  
14 of UNEs for both the “enterprise market” and the “mass market”. There are many  
15 federal offices and smaller installations where there are requirements for low capacity  
16 access — in some locations only a few business lines. To provide many services to the  
17 public, and for security, Federal activities are often widely dispersed.

18 Q. Are the FEAs’ activities dispersed among many urban and rural parts of  
19 Massachusetts?

20 A. Yes. There were about 55,600 federal civilian employees in the  
21 Commonwealth as of December 1998.<sup>6</sup> Both Middlesex and Suffolk counties had over

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<sup>3</sup> Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, “Local Telephone Competition: Status as of June 30, 2003”, December 2003, Table 3.

<sup>4</sup> *Triennial Review Order*, para. 7.

<sup>5</sup> See, for example, *Triennial Review Order*, paras. 298 and 497.

<sup>6</sup> United States Office of Personnel Management, *Biennial Report of Employment by Geographic Area*, December 31, 1998, pp. 84–86.

1 10,000 federal employees. However, at least one federal office was located in each of  
2 the state's 14 counties.<sup>7</sup>

3 Q. Do the FEAs have further interests in more and stronger competition  
4 among providers of telecommunications services throughout Massachusetts?

5 A. Yes. In addition to the fact that federal agencies access the switched  
6 network through both high- and low-capacity configurations, they have additional  
7 interests in the "mass market" as described in the *Triennial Review Order*. The  
8 availability of UNEs for the "mass market" is important to FEAs because the more  
9 extensive mass market provides an infrastructure base that enables competitive LECs  
10 to have a viable presence for services to large and small users.

11 **III. Scope of Testimony**

12 Q. What is the subject of this proceeding?

13 A. In the *Triennial Review Order*, the FCC found on a national basis that  
14 requesting carriers are impaired without access to unbundled local circuit switching  
15 when serving mass market customers.<sup>8</sup> However, the FCC stated that this finding is  
16 subject to granular review by state regulatory agencies pursuant to specifically  
17 enumerated triggers and other operational and economic criteria regarding facilities-  
18 based entry in specific markets.<sup>9</sup> Similarly, the FCC found on a national basis that  
19 requesting carriers are impaired without access to certain types of dedicated transport,  
20 also subject to granular route-based reviews by states.<sup>10</sup> Moreover, the FCC said state  
21 regulators have authority to conduct more granular reviews based on defined triggers or  
22 on the feasibility of alternatives to reverse its national finding that incumbent carriers

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7 *Id.*

8 *Triennial Review Order*, para. 419

9 *Id.*

10 *Id.*, para. 359.



1 must continue to unbundle certain types of enterprise market loops, including dark fiber  
2 loops, and certain DS1 and DS3 capacity loop facilities.<sup>11</sup>

3 Q. What actions has Verizon taken in response to these provisions of the  
4 *Triennial Review Order*?

5 A. Verizon asked the Department to find that unbundling should not be  
6 required for certain markets and routes in Massachusetts. In this connection, Verizon  
7 submitted panel Direct Testimony of John Conroy and John White on November 13,  
8 2003. Section II of that testimony concerns mass market switching. After describing  
9 the FCC's triggers for mass market switching, the witnesses set forth their views on the  
10 appropriate market definitions for applying the triggers. Then, they describe the  
11 evidence that Verizon has obtained to support its showing of "no impairment" under the  
12 self-provisioning trigger. Subsequently, the witnesses identify the markets in  
13 Massachusetts that allegedly meet the FCC's trigger.

14 Q. Do Verizon's witnesses offer testimony with respect to the other UNEs  
15 designated for granular review?

16 A. Yes. In Section III of their Direct Testimony, the witnesses address  
17 dedicated transport. They assert that the data collected by the company demonstrates  
18 that it should not be required to unbundle dedicated transport on a number of specific  
19 fiber routes based on the two triggers set forth in the *Triennial Review Order*. Finally, in  
20 Section IV, the witnesses address unbundling requirements for high-capacity local  
21 loops. They state that the company is continuing to review and analyze data  
22 concerning unbundling requirements for high-capacity loops.

23 Q. Did the witnesses subsequently submit additional testimony in this  
24 matter?

25 A. Yes. On December 19, 2003, the same witnesses submitted  
26 Supplemental Panel Testimony reflecting additional data that the company had

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<sup>11</sup> *Id.*, para. 7.

1 obtained. With regard to mass market switching, Verizon's witnesses assert that the  
2 additional data confirms its prior conclusions regarding places with "no impairment"  
3 according the FCC's test. With regard to dedicated transport, the additional data  
4 modified the company's findings. Finally, with respect to high-capacity local loops, the  
5 witnesses identify a number of customer locations where the FCC's loop triggers are  
6 satisfied.

7 ^ Q. What is the scope of your present testimony in this case?

8 A. I shall discuss Verizon's claims concerning local circuit switching for the  
9 mass market, dedicated transport, and high-capacity local loops. I shall begin with  
10 local circuit switching by addressing the company's definition of the markets to be  
11 employed for impairment analyses concerning this UNE.

#### 12 **IV. Local Circuit Switching**

13 Q. Is the definition of the market an important issue in evaluating the need for  
14 the local circuit switching UNE?

15 A. Yes. The specification of the market is central to any consideration of the  
16 FCC's national finding that competitors need the local circuit switching UNE, since the  
17 market boundaries circumscribe the area where this UNE would not be available for  
18 competitive LECs.

19 Q. What is the Massachusetts market that Verizon designates for "no  
20 impairment" without the local circuit switching UNE?

21 A. Verizon asserts that there are four markets in Massachusetts where  
22 competitive LECs would not be impaired without the local switching UNE for mass  
23 market subscribers:

- 24 1) Boston-Cambridge-Quincy MSA (Density Zones 1, 2 and 3);
- 25 2) Providence-New Bedford-Fall River MSA (Density Zone 3);
- 26 3) Springfield MSA (Density Zones 2 and 3); and

1           4)     Worcester MSA (Density Zones 2 and 3).<sup>12</sup>

2     The markets where Verizon asserts “no impairment” in Massachusetts are outlined on a  
3     map that Verizon provides with its filing.

4           Q.     What are density zones?

5           A.     UNE charges in Massachusetts are based in four zones reflecting  
6     subscriber density. Wire centers are classified by density zone, so that breakdowns of  
7     MSAs by density zone effectively differentiate by wire center serving areas. Density  
8     Zone 1 is the most dense, while Density Zone 4 is the least dense. All Density Zone 1  
9     wire centers are in the Boston–Cambridge–Quincy MSA, so that claims of no  
10    impairment for Density Zones 2 and 3 of the Springfield and Worcester MSAs are in  
11    fact claims that there is “no impairment” in the most dense portions of those zones,  
12    respectively. In total, the four MSAs that Verizon identifies are perhaps three–quarters  
13    of the state in geographical area. Verizon apparently designates the entire Boston–  
14    Cambridge–Quincy MSA. However, the higher density portions of the other MSAs  
15    where Verizon asserts “no impairment” are a smaller part of the total MSA area.

16          Q.     Why does Verizon use MSAs as a market descriptor?

17          A.     Verizon asserts that MSAs have well–established geographic boundaries  
18    set by the Federal Office of Management and Budget (“OMB”) that are available from  
19    publicly available sources and are specifically designed to capture economic  
20    communities of interest.<sup>13</sup> Specifically, Verizon claims that MSAs meet three important  
21    criteria for defining the market established by the FCC. First, MSAs reflect the  
22    geographic reach of newspaper, radio and television advertising, so that competitive  
23    LECs can target the markets economically and efficiently. Second, MSAs strike a  
24    “sensible balance” concerning size — small enough that conditions are reasonably  
25    homogeneous, yet large enough to be administratively workable. Third, MSAs take into

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<sup>12</sup>     Direct Testimony of John Conroy and John White, November 14, 2003, p. 4.

<sup>13</sup>     *Id.*, p. 9.

1 account the locations and concentrations of customers actually being served by  
2 competitors.<sup>14</sup>

3 Q. Do you believe it is appropriate to describe the market by MSAs?

4 A. Partly. I believe that MSAs can provide appropriate guidance in defining  
5 the markets for evaluating UNE needs, but MSAs are large geographically, and some  
6 breakdown is necessary for a more specific, granular analyses.

7 Q. How should the market be defined more precisely?

8 A. The markets for set study should focus on the places with the greatest  
9 densities of subscribers. Thus, a breakdown of the MSA by density zone, such as  
10 Verizon suggests, is important for a granular analysis.

11 Q. Why?

12 A. The rationale for designating high-density areas is that unit costs of  
13 service are generally less in high-density areas, and competitors will thus be able to  
14 participate more readily in the markets by providing services with their own  
15 telecommunications facilities. Thus, the “no impairment” market should reflect the  
16 highest density parts of the MSAs.

17 Q. What evidence does Verizon present to support its assertion that  
18 competitors meet the self-provisioning trigger for mass market switching in the  
19 designated markets?

20 A. Verizon’s witnesses state that the company collected and analyzed data  
21 at the wire center level from two sources.<sup>15</sup> First, Verizon used its internal databases to  
22 determine where, and to whom, the company leases stand-alone UNE loops.<sup>16</sup> This  
23 activity is called the “Line Count Study”. Second, Verizon supplemented the Line Count  
24 Study with residential listings in the E911 database. This activity, called the “Facilities–

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<sup>14</sup> *Id.*, pp. 10–11.

<sup>15</sup> *Id.*, p. 18.

<sup>16</sup> *Id.*

1 Based Study”, was intended to identify residential customers served by carriers which  
2 bypass Verizon’s network to serve mass market customers over their own loop facilities,  
3 such as cable telephony providers.<sup>17</sup>

4 . Q. Are competitive LECs using their own switches to serve “mass market”  
5 subscribers, as opposed to “enterprise market” subscribers, in the portions of the MSAs  
6 designated by Verizon?

7 A. Verizon’s witnesses state that the competitors are using switches to serve  
8 “mass market” customers,<sup>18</sup> but I have not seen any data demonstrating that they are  
9 using “mass market switches.” I believe that this distinction is critical. The *Triennial*  
10 *Review Order* states that “switches serving the enterprise market do not qualify for the  
11 triggers.”<sup>19</sup> Indeed, I believe that if competitive LEC switches are to qualify for the  
12 trigger, use for the “mass market” should not be simply incidental to their use to serve  
13 “enterprise market” consumers.

14 Q. Did the FCC specify a numerical standard as to how many mass market  
15 customers competitors must serve with their switches?

16 A. No. In this connection, I observe that the FCC found mass market  
17 switching impairment on a national basis even assuming that competitive LECs served  
18 nearly three percent of the residential market over their own facilities.<sup>20</sup> Certainly, I  
19 believe that the competitive LEC switches should just not be serving a *de minimus*  
20 number of “mass market” customers.

21 Q. Do the Verizon witnesses present data summarizing the results of the  
22 Line Count Study and the Facilities–Based Study?

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17 *Id.*

18 *Id.*

19 *Triennial Review Order*, para. 508.

20 *Id.*, para. 438.

A. Yes. The Proprietary Version of Attachment 2 to their testimony, which is Marked "Privileged and Confidential", shows competitors' loop counts for the designated density areas of the MSAs. **(BEGIN VERIZON PROPRIETARY)**

(END VERIZON

**PROPRIETARY)** However, many of these loops are undoubtedly used in conjunction with competitors' switches primarily in place to serve "enterprise market" customers. It is important to note that the purpose of the self-provisioning trigger is to demonstrate that it is technically and economically feasible for a competitive LEC to serve the mass market by using its own switches in combination with loops leased from the incumbent LEC. In my view, the incidental provision of service to mass market customer locations using switches deployed to serve enterprise customers demonstrates little about the technical and economic feasibility of deploying switches to serve the mass market.

Q. Is there another group of competitors' loops on Verizon Attachment 2 which also should be discounted in evaluating impairment in the areas designated by Verizon?

A. Yes. In evaluating the need for the local switching UNE, I believe that less weight should be accorded to competitors with their own distinct networks in effect providing local loops to their customers. The best example is intermodal alternatives such as cable telephony providers. Indeed, the FCC states that cable technology does not provide “probative evidence of an entrant’s ability to access the incumbent LEC’s wireline voice—grade local loop and thereby deploy local circuit switches.”<sup>21</sup>

Q. What is the effect of adjustments to Verizon Attachment 2 to reflect service using switches primarily to serve enterprise users and loops by cable telephony providers?

21 *Id.*, para. 446.

1           A.     The adjustment is potentially very large.     **(BEGIN VERIZON**  
2     **PROPRIETARY**

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5                     **(END VERIZON PROPRIETARY)** When such adjustments are made,  
6     the number of loops for mass market switches, which should properly be considered in  
7     the impairment studies, may well be reduced considerably. More light will be shed on  
8     this matter as additional evidence is reviewed.

9     **V.     Dedicated Transport**

10           Q.     Have you reviewed Verizon's testimony concerning routes for which the  
11     triggers for dedicated transport identified in the *Triennial Review Order* are met?

12           A.     Yes. For dedicated transport in Massachusetts, Verizon relies on a  
13     combination of two FCC triggers.<sup>22</sup> The first trigger is designed to identify routes for  
14     which the ability to self-provision transport facilities is evident based on the existence of  
15     competitive transport facilities. Specifically, when three or more competing carriers, not  
16     affiliated with each other or with the incumbent LEC, each have deployed transport  
17     facilities along a specific route, the FCC states that there is evidence that competitive  
18     carriers are capable of self-deploying.<sup>23</sup> The second trigger is designed to identify  
19     where wholesale alternatives are available. Specifically, the FCC states that competing  
20     carriers are not impaired when two or more alternative transport providers, not affiliated  
21     with each other or the incumbent LEC, are immediately capable and willing to provide  
22     transport at a specific capacity along a given route between incumbent LEC switches or  
23     wire centers.<sup>24</sup>

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<sup>22</sup> Direct Testimony of John Conroy and John White, November 14, 2003, p. 28.

<sup>23</sup> *Triennial Review Order*, para. 400.

<sup>24</sup> *Id.*

1 Q. According to Verizon's witnesses, how many routes meet these  
2 conditions?

3 A. In their Direct Testimony, Verizon's witnesses state that there are 194  
4 direct routes or pairs of wire centers that meet one or both of the FCC triggers for  
5 dedicated transport.<sup>25</sup> However, the company conducted further studies and analyses  
6 of discovery material, and the witnesses reported in their Supplemental Testimony that  
7 after incorporating the responses to discovery and making certain adjustments, they are  
8 able to conclude that 186 routes meet one or both of the triggers for dark fiber  
9 transport, 185 routes meet one or both of the triggers for DS3 dedicated transport, and  
10 174 routes meet the wholesale trigger, which applies to DS1 capacity transport.<sup>26</sup>

11 Q. What is your assessment of Verizon's claims?

12 A. At this point, I have not reviewed all of the evidence. However, Verizon  
13 claims that the designated routes in the four MSAs meet a trigger for dedicated  
14 transport, which does not seem to be an extremely broad claim. However, the  
15 company's claims are weakly fortified. For example, the witnesses seem satisfied that  
16 "carriers hold themselves out as offering transport facilities on a wholesale basis."<sup>27</sup>  
17 Indeed, Verizon asks the Department to rely on evidence of a "carrier's general  
18 willingness to offer its transport facilities on a wholesale basis and treat all such carrier's  
19 transport facilities as available for leasing at wholesale. From the perspective of an end  
20 user interested in more competitive options, I am concerned by the fact that the  
21 company's witnesses admit that they have not adhered rigorously to the "bright line"  
22 test set forth by the FCC.

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<sup>25</sup> Direct Testimony of John Conroy and John White, November 14, 2003, p. 47.

<sup>26</sup> Supplemental Testimony of John Conroy and John White, December 19, 2003, p. 9.

<sup>27</sup> Direct Testimony of John Conroy and John White, November 14, 2003, p. 45.



1   **VI.    High Capacity Local Loops**

2           Q.    Have you reviewed Verizon's testimony concerning high capacity local  
3 loops?

4           A.    Yes.   In their Direct Testimony, Verizon's witnesses stated that the  
5 company was unable to identify customer locations meeting the FCC's hi-cap loop  
6 triggers because information on competitive LEC loop deployment was in the hands of  
7 those carriers.<sup>28</sup>   Subsequently, however, the company reviewed responses to  
8 information requests, so that the witnesses were able to identify locations in  
9 Massachusetts allegedly meeting the triggers.<sup>29</sup>

10          Q.    What are the triggers for local loops established in the *Triennial Review*  
11 *Order*?

12          A     The FCC authorized state agencies to determine the specific customer  
13 locations that meet one of two triggers.   The first trigger looks at whether competing  
14 carriers have self-provisioned dark fiber or DS3 capacity loop facilities.<sup>30</sup>   Under the  
15 self-provisioning trigger, the Department must find "no impairment" if two or more  
16 unaffiliated competing carriers: (i) have deployed to a particular customer location their  
17 own dark fiber facilities and are serving customers with those facilities at that location;  
18 or (ii) have deployed DS3 facilities by attaching their own electronics to activate dark  
19 fiber facilities obtained under a long-term indefeasible right of use and are serving  
20 customers with those facilities at that location.   The second FCC trigger looks at  
21 whether DS1 or DS3 loop facilities are available from other carriers on a wholesale  
22 basis.   Under this test, competitive carriers are not impaired if two or more unaffiliated  
23 competing carriers each (i) has deployed its own DS1 or DS3 facilities; (ii) offers a DS1  
24 or DS3 loop over its own facilities on an available wholesale basis to other carriers

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<sup>28</sup>    *Id.*, p. 12.

<sup>29</sup>    *Id.*

<sup>30</sup>    *Id.*, p. 13.

1 seeking to serve customers at that location; and (iii) has access to their entire customer  
2 location, including each individual unit at that place.<sup>31</sup>

3 Q. What findings does Verizon report with respect to these triggers?

4 A. The witnesses state that the company has evidence that 70 customer  
5 locations meet either of the FCC's triggers.<sup>32</sup> There are 15 locations that meet the  
6 DS1 wholesale trigger.<sup>33</sup> For DS3 loops, 67 customer locations meet the self-  
7 provisioning trigger, and 12 meet the wholesale trigger.<sup>34</sup> Finally, there are 17  
8 customer locations meeting the self-provisioning trigger.<sup>35</sup>

9 Q. What is your assessment of Verizon's claims?

10 A. The extent of Verizon's claims seems moderate, but the witnesses identify  
11 numerous "assumptions" in the company's analyses. For example, they state that the  
12 company "made the reasonable assumption that when competing carriers deploy fiber  
13 and attach OCn electronics (e.g. OC48 multiplexers), they then subdivide — i.e.  
14 channelize — the OCn system into the lower transport levels required by their  
15 customers, including DS3s or DS1s."<sup>36</sup> Also, the company apparently assumed that all  
16 fiber loop facilities have dark fiber.<sup>37</sup> Moreover, Verizon assumed that certain carriers  
17 are wholesale providers unless they provided information that they were not.<sup>38</sup> I am  
18 skeptical of the cascaded assumptions. As I stated in my discussion of dedicated  
19 transport above, the company's witnesses admit that they have not adhered rigorously  
20 to the "bright line" test set forth by the FCC. I urge the Department to scrutinize the

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<sup>31</sup> *Id.*, p. 14.

<sup>32</sup> *Id.*, p. 17.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, p. 18.

<sup>37</sup> *Id.*, p. 19.

<sup>38</sup> *Id.*, p. 20.

1 company's analyses carefully and ensure that the tests specified in the *Triennial*  
2 *Review Order* are fully met.

3 Q. Does that conclude your testimony?

4 A. Yes, it does.